IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3625 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NIRAV NIRANJAN SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3625 of 2001

MR PM THAKKAR SR ADVOCATE for M/S THAKKAR ASSOC. for Petitioner

MR KT DAVE AGP for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/10/2001

ORAL JUDGEMENT

1. In exercise of powers conferred under section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the Act' for short), the Commissioner of

Police, Ahmedabad City, Ahmedabad, vide order dated February 16, 2001, Annexure A to the petition, has detained the petitioner -detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority has considered the detenu as a dangerous person within the meaning of Section 2 (c) of the Act as two FIRs for commission of offences under sections 337, 338, 304(2), 420, 418, 34, 429, 120B of the Indian Penal Code and for the offences under Sections 3 (2) (c) (d), 7 (1) (i) (ii) and 2 punishable under Section 42 of the Gujarat Ownership of Flats Act are registered with Maninagar Police Station against the detenu and according to the detaining authority the activities of the detenu are prejudicial to the maintenance of public order and the detaining authority with a view to curb such activities of the detenu, detained him.

3. By filing this petition under Article 226 of the Constitution, the petitioner has challenged the order of detention on various grounds and prayed to issue an appropriate writ, order or direction quashing and setting aside the order of detention and to set the detenu at liberty forthwith. Though the petitioner has challenged the grounds of detention on various grounds, Mr. P.M. Thakkar, learned Senior Advocate for the petitioner has restricted his arguments to the point of non-supply of legible copies of the documents relied upon by the detaining authority which has seriously prejudiced the right of the detenu of making an effective representation to the concerned authority and on this ground alone according to the learned counsel for the petitioner, the petition deserves to be allowed. He, therefore, urged to allow the petition and prayed to set the detenu at liberty forthwith.

4. Mr. K.T. Dave, learned AGP who appears for the respondents has opposed the petition by filing reply affidavit sworn by P.C. Pande, Police Commissioner, Ahmedabad City, Ahmedabad. He however does into dispute the fact that so far as pages 113, 337 and 375 which are the documents relating to the FIRs they are illegible and therefore urged that appropriate order may be passed in light of the principles of law enunciated by the Supreme Court and this Court.

5. I have heard the learned advocates for the parties. I have perused the averments made in the petition, the impugned order of detention and the documents annexed hereto so also the judgment cited at

the bar.

6. Similar question had arisen before a Division Bench of this Court in the case of Vikramsinh Pravinsinh Rana v. State of Gujarat and another, 1988 (2) GLH 414. In the said case some of the pages of the judgment supplied to the detenu were not legible and the Division Bench of this court held that it would amount to non-communication of the grounds and it also adversely affected the petitioner's right of making effective representation to the concerned authority and, therefore, the order of detention was quashed and set aside.

7. Applying the said principles to the facts of the present case, be it stated that pages 113, 337 and 375 which are relating to the FIR supplied to the detenu by the detaining authority are illegible and, therefore, it can be said that non-supply of legible copies of the documents has seriously prejudiced the petitioner's right of making an effective representation to the concerned authority and on this ground alone the order of detention stands vitiated and the petition deserves to be allowed.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)

(karan)